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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,797	07/10/2001	Gary F. Driscoll	ETS-0200	9361

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07/22/2003

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EXAMINER

CHRISTMAN, KATHLEEN M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 07/22/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

**Office Action Summary**

Applicati n No.

09/901,797

Applicant(s)

DRISCOLL ET AL.

Examiner

Kathleen M Christman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

In response to the election filed 05/19/2003, claims 1-29 are pending.

#### ***Election/Restrictions***

1. Applicant's election without traverse of Group II in Paper No. 8 is acknowledged.
2. Claims 1-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 8.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: There is no structural relationship being the transmitted first information indicative of a version of testing materials and the receiving of first testing materials. Further the preamble of the claim states "a method of operating a testing center", yet the body of the claim sets forth no step or suggestion how the method is to actually perform this function.

Claims 14 and 15 contains the trademark/trade name Java Enterprise, ThinWeb and JRUN V3.0. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second

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paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a specific programming platform and, accordingly, the identification/description is indefinite. Claim 18 recites the limitation "said test center installation status" in line 4. There is insufficient antecedent basis for this limitation in the claim. Claims 13, 16, 17 and 19-20 are rejected for their incorporation of one or more of the above errors through their dependencies.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-17, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard et al (US 6162060). Richard et al teaches a method for the operation of a educational system which includes the steps of: establishing a communication link with a first server (the main computer) remote from a test center (the student station); transmitting to said first server via said communication link, first information indicative of a version of testing materials installed at said testing center; receiving, from said first server via said communication link, first testing materials comprising one or test questions (see col. 9: 31-36); and electronically delivering said test questions to an examinee at said testing center, see col. 4: 55-65. The act of transmitting comprising transmitting a test center record indicative of a status of said testing center, said status including an identity of testing materials installed at said testing center (claim

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16) and transmitting, to said first server, property information indicative of software installed at said testing center (claim 17) is taught at col. 6: 58-12. Regarding claim 21, the system of Richard et al includes a test delivery management module which receives testing materials, said test delivery management module having a database which stores the received testing materials, said test delivery management module further hosting first client server logic which retrieves the testing material from said database (Figure 4, element 403) and a testing-station module which receives the testing materials from said test-delivery management module in a manner controlled by said first client-server logic, said testing-station module having a user interface which presents the testing materials to a candidate in a manner controlled by said first client server logic (the student workstation under control of the execution files).

Richard et al does not specifically teach that the communication link is established over a wide area network (claims 12 and 21), that the network is the Internet (claim 13), that the establishing comprising using a Java Enterprise Service (claim 14), where the Java Enterprise Service is either ThinWeb or JRUN v3.0 (claim 15) and the general concept of using java (claim 22). It is the examiner's position that one of ordinary skill in the art recognizes that any LAN based system (such as Richard et al) may easily be modified to be WAN based system, the internet of which is the most common WAN and as such it would be obvious to one of ordinary skill in the art to modify the Richard et al system in this manner. Regarding claims 14, 15, and 21, Richard et al teaches "it is of primordial importance that the computers, which are of differing manufacture may communicate with each other, and any software products which rely on distributed tasks over the various computers in the network should be so constructed as to make the difference between the various kinds of computers in the network moot" at col. 4: 13-19. It is of common knowledge and skill in the art that Sun Microsystems developed and marketed all of its Java packages to be platform independent. It would be obvious to one of ordinary skill in the art to use a java software package to develop the method and system of Richard et al so as to provide the platform independent requirements that the invention calls for.

5. Claims 18-20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard et al (US 6162060) in view of Cook et al (US 2002/0168621 A1).

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Regarding claims 18-20 and 23, Richard et al teaches all aspects of the claimed invention as shown above except receiving using a transport protocol and at least one other protocol that packages information according to said transport protocol, data indicative of said test center installation status (claim 18), packaging said first information in one or more data structures according to a first protocol and sending said one or more data structures to said first server via said wide-area networking using a transport protocol different from said first protocol (claim 19) where the transport protocol is Hypertext Transport Protocol (HTTP). Nor does Richard et al describe the protocol engine as in claim 23. Cook et al teaches how encryption algorithms function in paragraphs 136-138. It is the examiner's position that this functionality is the same as that described by claims 18 and 19. Cook et al does not specifically mention the use of HTTP, however HTTP is a known industry standard and it would thus be obvious to implement the system using HTTP.

Regarding claims 24-29 Richard et al teaches a system similar to that of the claimed protocol engine, including: a service module which generates service data that provides a service to the testing center; a service authorization module which is communicatively coupled to said service module, which receives the service data, and which engages in an authorization inquiry with the testing center to determine whether the test service center may perform said service for said testing center, and which forward said service data to the testing center according to a result of said authorization inquiry (col. 4: 49-54), claim 24, including seeing if center is authorized to receive the materials, as in claim 29, where the materials are testing material (see col. 9: 31-36), claim 27. The system further includes provisions for updating the version of the materials (col. 6:59-64), as in claim 29.

Richard et al does not teach the specific use of a wide area network (claim 24), encryption modules including an authentication module (claim 24) , where the authentication protocol includes a challenge response system (claim 26), and the use of a transport protocol namely Hypertext transport protocol (HTTP) or secure Hypertext Transport Protocol (claim 25). . Cook et al teaches how encryption algorithms function in paragraphs 136-138. It is the examiner's position that this functionality is the same as that described by claims 24 and 26. Cook et al does not specifically mention the use of

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HTTP, however HTTP is a known industry standard and it would thus be obvious to implement the system using HTTP.


**Conclusion**

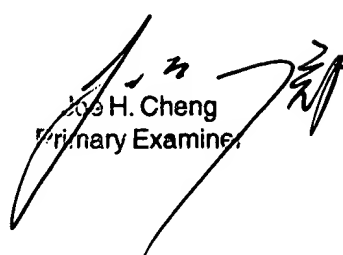
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- a. Allison (US 6546230 B1) teaches a system for transmitting professional assessments and their responses to a testing center
  - b. Hitchcock et al (US 5823781) teaches a system which ensures a trainee receives training the most up-to-date software

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (703) 308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Kathleen M. Christman  
July 17, 2003

  
Joe H. Cheng  
Primary Examiner